

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BACKERTOP LICENSING LLC,

Plaintiff,

CANARY CONNECT, INC.,

Defendant.

Civ. No. 22-572-CFC

BACKERTOP LICENSING LLC,

Plaintiff,

AUGUST HOME, INC.,

Defendant.

Civ. No. 22-573-CFC

AFFIDAVIT FROM FRESH IP PLC IN RESPONSE TO THE
MEMORANDUM ORDER OF MARCH 31, 2023 DE#25

Clifford D. Hyra, as managing member of FRESH IP, PLC, being duly sworn, deposes
and says that:

1. I am over the age of 18, and a resident of the Commonwealth of Virginia.
2. I am an attorney in good standing in the Commonwealth of Virginia.
3. I make this affidavit in regards to the issue of compliance with the Court's Order of March 31, 2023 [DE# 25].
4. I have personal knowledge of the facts herein, and if called as a witness, could testify completely thereto.
5. Plaintiff, Backertop Licencing LLC is represented in this matter by Mr. Ronald Burns, an attorney formerly at FRESH IP, PLC, and Mr. Jimmy Chong, local counsel. No other

attorney at Fresh IP has represented Plaintiff in this or any other matter. I have not made an appearance in this matter and have not represented Plaintiff in this matter. Plaintiff is a client of Mr. Burns. Plaintiff was brought into the firm by Mr. Burns. Mr. Burns remains counsel for Plaintiff. Fresh IP PLC is a third party to this matter.

6. Mr. Burns announced his resignation from Fresh IP on Friday, April 21, 2023, with the resignation effective Friday April 28, 2023. In examining the records of matters he was handling at the firm, I became aware of pending issues in this matter, including the Order of March 31. Fresh IP was not previously made aware of the Court's request for materials from third party Fresh IP.
7. Although no attorney currently at Fresh IP has made an appearance in this matter, I reached out to Mr. Burns and Mr. Chong to inquire as to the status of the production of materials ordered by the Court. Fresh IP understands that counsel for Plaintiff, Mr. Burns and Mr. Chong, will be handling Plaintiff's response to the Court's Order.
8. Mr. Burns was at all times, and continues to be the sole attorney responsible for this matter. No other counsel at Fresh IP has made any appearance on behalf of, nor any representations to the Court regarding this matter. No counsel at Fresh IP is admitted in Delaware and no counsel currently at Fresh IP is able to represent Plaintiff in this matter, nor has any counsel currently at Fresh IP been engaged by Backertop Licensing.
9. Fresh IP, as a third party, recognizes its obligation to provide any responsive non-privileged documents within its possession, custody or control, in compliance with the Court's Order. Fresh IP recognizes its obligation to provide a list and description of any responsive privileged documents in its possession, custody or control. Fresh IP is complying by providing the following responses.

10. No counsel at Fresh IP has any knowledge of any facts relative to the issues raised in the Court's March 31 Order. No documents related to this matter or related to Plaintiff are in the possession, custody or control of Fresh IP, except as referenced below. All documents were maintained at all times by Mr. Burns and remain with Mr. Burns after his departure. Mr. Burns remains counsel of record in this matter.
11. Responsive to topic 1 of the Court's March 31 Order, Fresh IP is not in possession of any documents under this topic.
12. Responsive to topic 2 of the Court's March 31 Order, Fresh IP is in possession of a retainer agreement dated April 27, 2022, which agreement has two parties, Fresh IP PLC and Backertop Licensing LLC. No other entities are referenced in the agreement. The agreement was executed by Plaintiff and by Mr. Burns. This agreement engages Mr. Burns as the sole attorney to work on this matter. This agreement is believed to be privileged, that privilege belongs to Backertop Licensing and has not been waived to Fresh IP's knowledge. This document is also in the possession of Plaintiff's counsel, and Plaintiff's Counsel is the appropriate party to produce this document or assert privilege. Fresh IP is not in possession of any additional documents.
13. Responsive to topic 3 of the Court's March 31 Order, Fresh IP is not in possession of any documents under this topic.
14. Responsive to topic 4 of the Court's March 31 Order, Fresh IP is not in possession of any documents under this topic.
15. Responsive to topic 5 of the Court's March 31 Order, Fresh IP is in possession of numerous emails which were very recently forwarded by Mr. Burns. These emails copy a number of different parties. Mr. Burns would know which of these emails are attorney-

client privileged communications. I am maintaining approximately 450 such email documents, which are from the dates April 2022 to April 2023. As many of these emails include substantial email chains, it appears the documents may constitute two to three thousand pages, although with significant duplication. I was not originally included on the vast majority of these emails. Some of these emails appear to be relevant to at least subparts e, g, h, and i of the Memorandum Order. After review, approximately 130 of these documents appear to be relevant to the Memorandum Order. These documents are also in the possession of Plaintiff's counsel, and Plaintiff's counsel is the appropriate party to produce these documents or assert privilege. I will maintain these documents until this matter is resolved.

16. Responsive to topic 6 of the Court's March 31 Order, Fresh IP is not in possession of any documents under this topic.
17. Responsive to topic 7 of the Court's March 31 Order, Fresh IP is not in possession of any documents under this topic.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Subscribed and sworn to before me this 4 day of May,

2023.

David Porter Notary Public

My Commission Expires: 2/29/24

State of Virginia, County of Hanover

Respectfully Submitted,

/s/ Cliff Hyra

Clifford D. Hyra
FRESH IP PLC
11710 Plaza America Drive
Suite 2000
Reston, Virginia 20190
Cliff@freship.com
703-943-8703

